

possibly have had to the value of the land? It *had* a relation to the quantity of land that the Government was prepared to grant to the purchaser, because it may be assumed that the non-resident was not a true settler, and therefore should not be entitled to hold as much land as should be allowed to the true pioneer, but it had no relation to the *value* of the land. More than that, the schedule placed the same rate upon any and every description of land. There was no classification as to nature, quality, or locality. The best potential pasture land was in the same position under the schedule as the hill-top or the sandy waste. The only factor, apparently, upon which the rates in the yardstick were based was the time of purchase and the number of years before the Gipps and Hobson Proclamations that the purchase was made. That is a factor which it is understandable that the Crown would take into consideration in fixing the rates, because it may well have been assumed that the person who bought in the earlier days and took up his residence in New Zealand had run greater risks than the man who came and purchased later, and that those risks entitled the earlier purchaser to greater consideration at the hands of the Crown and a grant of land to a greater extent than the later arrival.

67. In my view, it is an utter fallacy to say that the yardstick fixed the *value* of land *as between the purchaser and the Maori vendor*, or was, as Mr. Cooney argues, the measure of "equitable terms." That the yardstick can have no relation to the *value* of the land is also shown by the terms of the (disallowed) Ordinance of 1842, the effect of which would have been to abolish the yardstick and substitute a basis of a grant from the Crown for four times as many acres *out of the land* "validly sold" as the purchaser should be found to have expended pounds sterling—*i.e.*, at the rate of 5s. per acre for all lands whenever purchased, wherever situated, and whatever the quality. The words "out of the land" and "validly sold" necessarily presuppose that there may be a *valid* sale of a larger area than that which is granted by the Crown to the purchaser.

68. The point is that the schedule can have had no application to the position as between the purchaser and the Maori vendor if in fact and in law the whole of the land in the purchase was the property of the Crown, as it undoubtedly was. The truth of the matter is, as I see it, that the whole of the yardstick—and I include the provision as to the maximum grant of 2,560 acres—was devised by the Crown as a matter of public policy for the purposes of eliminating the "land-shark" or "land-jobber," limiting individual holdings, ensuring as far as possible proper and profitable user of the land—and all this in the assumed interests of the general prosperity of the country—and requiring the land-purchaser to make a reasonable contribution towards the expenses of the establishment and government of the new colony. The Crown alone was concerned in these limitations; the Maori who had sold the land on equitable terms had no interest in the matter.

69. The basic fallacy underlying the argument for the Maoris is in the contention that the question of equity and good conscience has to be regarded as a matter between the Crown and the Maoris, and that the burden lies upon the Crown to show that the Crown has rights in equity and good conscience, and that, if the Crown fails to show that, the lands should revert to the Maori vendor. That is most certainly not the position. It is for the Maoris to show that the original vendors had a right in equity and good conscience to have the surplus lands returned to them, and the question of conflicting rights arises not as between the Maori vendor and the Crown, but as between the Maori vendor and the purchaser. So far as concerns lands which were sold by the Maoris prior to the Treaty of Waitangi—*i.e.*, the lands comprised in the "old land claims"—the Crown stood in the place of the purchasers, and if in truth the surplus lands were in good faith the property of the purchasers, then it was their property and not the property of the Maoris that the Crown took. If that is so, the Maori vendors would have had no rights at all in equity and good conscience to have the "surplus" returned to them.